United Nations PCNICC/2000/WGRPE/L.11

Preparatory Commission for the International Criminal Court

Distr.: Limited
22 June 2000

Original: English

Working Group on Rules of Procedures and Evidence
New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Report of the Working Group

Chapter 11
Penalties

Rule 7.1
Determination of sentence

1. In its determination of the sentence pursuant to article 78, paragraph 1, the Court shall

(a) Bear in mind that the totality of any sentence of imprisonment and fine, as the case may be, imposed under article 77 must reflect the culpability of the convicted person;

(b) Balance all the relevant factors, including any mitigating and aggravating factors and consider the circumstances both of the convicted person and of the crime;

(c) In addition to the factors mentioned in article 78, paragraph 1, give consideration, *inter alia*, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person.

2. In addition to the factors mentioned above, the Court shall take into account, as appropriate:

(a) Mitigating circumstances such as:

(i) The circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress;

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(ii) The convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court;

(b) As aggravating circumstances:

(i) Any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature;

(ii) Abuse of power or official capacity;

(iii) Commission of the crime where the victim is particularly defenceless;

(iv) Commission of the crime with particular cruelty or where there were multiple victims;

(v) Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3;

(vi) Other circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned.

3. Life imprisonment may be imposed when justified by the extreme gravity of the crime and the individual circumstances of the convicted person, as evidenced by the existence of one or more aggravating circumstances.

Rule 7.2
Imposition of fines under article 77

1. In determining whether to order a fine under article 77, paragraph 2 (a), and in fixing the amount of the fine, the Court shall determine whether imprisonment is a sufficient penalty. The Court shall give due consideration to the financial capacity of the convicted person, including any orders for forfeiture in accordance with article 77, paragraph 2 (b), and, as appropriate, any orders for reparation in accordance with article 75. The Court shall take into account, in addition to the factors referred to in rule 7.1, whether and to what degree the crime was motivated by personal financial gain.

2. A fine imposed under article 77, paragraph 2 (a), shall be set at an appropriate level. To this end, the Court shall, in addition to the factors referred to above, in particular take into consideration the damage and injuries caused as well as the proportionate gains derived from the crime by the perpetrator. Under no circumstances may the total amount exceed 75 per cent of the value of the convicted person's identifiable assets, liquid or realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants.

3. In imposing a fine, the Court shall allow the convicted person a reasonable period in which to pay the fine. The Court may provide for payment of a lump sum or by way of instalments during that period.

4. In imposing a fine, the Court may, as an option, calculate it according to a system of daily fines. In such cases, the minimum duration shall be 30 days and the maximum duration five years. The Court shall decide the total amount in accordance with sub-rules 1 and 2. It shall determine the amount of daily payment in the light of

the individual circumstances of the convicted person, including the financial needs of his or her dependants.

5. If the convicted person does not pay the fine imposed in accordance with the conditions set above, appropriate measures may be taken by the Court pursuant to rules 10.23 to 10.28 and in accordance with article 109. Where, in cases of continued wilful non-payment, the Presidency, on its own motion or at the request of the Prosecutor, is satisfied that all available enforcement measures have been exhausted, it may as a last resort extend the term of imprisonment for a period not to exceed a quarter of such term or five years, whichever is less. In the determination of such period of extension, the Presidency shall take into account the amount of the fine, imposed and paid. Any such extension shall not apply in the case of life imprisonment. The extension may not lead to a total period of imprisonment in excess of 30 years.

6. In order to determine whether to order an extension and the period involved, the Presidency shall sit in camera for the purpose of obtaining the views of the sentenced person and the Prosecutor. The sentenced person shall have the right to be assisted by counsel.

7. In imposing a fine, the Court shall warn the convicted person that failure to pay the fine in accordance with the conditions set out above, may result in an extension of the period of imprisonment as described in this rule.

Rule 7.3
Orders of forfeiture

1. In accordance with article 76, paragraphs 2 and 3 and rules 6.1 (e) and 6.21, at any hearing to consider an order of forfeiture, a Chamber shall hear evidence as to the identification and location of specific proceeds, property or assets which have been derived directly or indirectly from the crime.

2. If before or during the hearing, a Chamber becomes aware of any bona fide third party who appears to have an interest in relevant proceeds, property or assets, it shall give notice to that third party.

3. The Prosecutor, the convicted person and any bona fide third party with an interest in the relevant proceeds, property or assets may submit evidence relevant to the issue.

4. After considering any evidence submitted, a Chamber may issue an order of forfeiture in relation to specific proceeds, property or assets if it is satisfied that these have been derived directly or indirectly from the crime.

Rule 7.4
Orders to transfer fines or forfeitures to the Trust Fund

Before making an order pursuant to article 79, paragraph 2, a Chamber may request the representatives of the Fund to submit written or oral observations to it.

22 June 2000

Original: English

Preparatory Commission for the International Criminal Court
Working Group on Rules of Procedure and Evidence
New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Report of the Working Group

Chapter 12
Appeal and revision

Section I
General provisions

Rule 8.1
Rules governing proceedings in the Appeals Chamber

Parts 5 and 6 and rules governing proceedings and the submission of evidence in the Pre-Trial and Trial Chambers shall apply *mutatis mutandis* to proceedings in the Appeals Chamber.

Section II
Appeals against convictions, acquittals, sentences and reparation orders

Rule 8.2
Appeal

1. Subject to sub-rule 2, an appeal against a decision of conviction or acquittal under article 74, a sentence under article 76 or a reparation order under article 75 may be filed not later than 30 days from the date on which the party filing the appeal is notified of the decision, the sentence or the reparation order.

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2. The Appeals Chamber may extend the time limit set out in sub-rule 1, for good cause, upon the application of the party seeking to file the appeal.

3. The appeal shall be filed with the Registrar.

4. If an appeal is not filed as set out in sub-rules 1 to 3, the decision, the sentence or the reparation order of the Trial Chamber shall become final.

Rule 8.3
Procedure for the appeal

1. Upon the filing of an appeal under rule 8.2, the Registrar shall transmit the trial record to the Appeals Chamber.

2. The Registrar shall notify all parties who participated in the proceedings before the Trial Chamber that an appeal has been filed.

Rule 8.4
Discontinuance of the appeal

1. Any party who has filed an appeal may discontinue the appeal at any time before judgement has been delivered. In such case, the party shall file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other parties that such a notice has been filed.

2. If the Prosecutor has filed an appeal on behalf of a convicted person in accordance with article 81, paragraph 1 (b), before filing any notice of discontinuance, the Prosecutor shall inform the convicted person that he or she intends to discontinue the appeal in order to give him or her the opportunity to continue the appeal proceedings. **(Question of use of word "party", still pending)**

Rule 8.5
Judgement on appeals against reparation orders

1. The Appeals Chamber may confirm, reverse or amend a reparation order made under article 75.

2. The judgement of the Appeals Chamber shall be delivered in accordance with article 83, paragraphs 4 and 5.

Section III
Appeals against other decisions

Rule 8.6
Appeals that do not require the leave of the Court

1. An appeal may be filed under article 81, paragraph 3 (c) (ii), or article 82, paragraph 1 (a) or (b), not later than five days from the date upon which the party filing the appeal is notified of the decision.

2. An appeal may be filed under article 82, paragraph 1 (c), not later than two days from the date upon which the party filing the appeal is notified of the decision.

3. Rule 8.2, sub-rules 3 and 4, shall apply to appeals filed under sub-rules 1 and 2 of this rule.

Rule 8.7
Appeals that require leave of the Court

1. When a party wishes to appeal a decision under article 82, paragraph 1 (d), or article 82, paragraph 2, that party shall, within five days of being notified of that decision, make a written application to the Chamber that gave the decision, setting out the reasons for the request for leave to appeal.

2. The Chamber shall render a decision and shall notify all parties who participated in the proceedings that gave rise to the decision referred to in sub-rule 1.[1]

Rule 8.8
Procedure for the appeal

1. As soon as an appeal has been filed under rule 8.6 or as soon as leave to appeal has been granted under rule 8.7, the Registrar shall transmit to the Appeals Chamber the record of the proceedings of the Chamber that made the decision that is the subject of the appeal.

2. The Registrar shall give notice of the appeal to all parties who participated in the proceedings before the Chamber that gave the decision that is the subject of the appeal, unless they have already been notified by the Chamber under rule 8.7, sub-rule 2.

3. The appeal proceedings shall be in writing unless the Appeals Chamber decides to convene a hearing.

4. The appeal shall be heard as expeditiously as possible.

5. When filing the appeal, the party appealing may request that the appeal have suspensive effect in accordance with article 82, paragraph 3.

Rule 8.9
Discontinuance of the appeal

Any party who has filed an appeal under rule 8.6 or who has obtained the leave of a Chamber to appeal a decision under rule 8.7 may discontinue the appeal at any time before judgement has been delivered. In such case, the party shall file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other parties that such a notice has been filed.

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[1] (79) There is a need to clarify the concept of "party" and ensure consistency of terminology throughout the Rules of Procedure.

Rule 8.10
Judgement on the appeal

1. An Appeals Chamber which considers an appeal referred to in this section may confirm, reverse or amend the decision appealed.

2. The judgement of the Appeals Chamber shall be delivered in accordance with article 83, paragraph 4.

Section IV
Revision of conviction or sentence

Rule 8.11
Application for revision

1. An application for revision provided for in article 84, paragraph 1, shall be in writing and shall set out the grounds on which the revision is sought. It shall as far as possible be accompanied by supporting material.

2. The determination on whether the application is meritorious shall be taken by a majority of the judges of the Appeals Chamber and shall be supported by reasons in writing.

3. Notification of the decision shall be sent to the applicant and, as far as possible, to all the parties who participated in the proceedings related to the initial decision.

Rule 8.12
Determination on revision

1. On a date which it shall determine and shall communicate to the applicant and to all those having received notification under rule 8.11, sub-rule 3, the relevant Chamber shall hold a hearing to determine whether the conviction or sentence should be revised.

2. For the conduct of the hearing, the relevant Chamber shall exercise, *mutatis mutandis*, all the powers of the Trial Chamber pursuant to Part 6 and the rules governing proceedings and the submission of evidence in the Pre-Trial and Trial Chambers.

3. The determination on revision shall be governed by the applicable provisions of article 83, paragraph 4.

23 June 2000

Original: English

Preparatory Commission for the International Criminal Court
Working Group on Rules of Procedure and Evidence
New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Report of the Working Group

Chapter 12
Appeal and revision

Addendum

Rule 8.12

Add to the present text of rule 8.12 the contents of former rule 10.15, as follows:

Determination on revision

1.

2.

3.

4. For the conduct of the hearing, the relevant Chamber shall issue its order sufficiently in advance to enable the transfer of the sentenced person to the seat of the Court, as appropriate.

5. The determination of the Court shall be notified without delay to the State of enforcement.

6. The provisions of rule 10.9, sub-rule 3, shall be applicable.

00-49960 (E)

27 June 2000

Original: English

Preparatory Commission for the International Criminal Court
Working Group on Rules of Procedure and Evidence
New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Report of the Working Group

Chapter 12
Appeal and revision

Corrigendum

1. Former rule 10.15 will not be merged to rule 8.12, but rather become rule 8.11 *bis*.

Its text will be as contained in document PCNICC/2000/WGRPE/L.15, with the following single amendment: In sub-rule 2, the word "notified" will be replaced by the word "communicated".

2. Rule 8.12 will consequently remain as contained in PCNICC/2000/WGRPE/L.12.

00-50593 (E)

22 June 2000

Original: English

Preparatory Commission for the International Criminal Court
Working Group on Rules of Procedure and Evidence
New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Report of the Working Group

Chapter 13
Compensation to an arrested or convicted person

Rule 8.13
Request for compensation

1. Anyone seeking compensation on any of the grounds indicated in article 85 shall submit a request, in writing, to the Presidency, which shall designate a Chamber composed of three judges to consider the request. These judges shall not have participated in any earlier judgement of the Court regarding the person making the request.

2. The request for compensation shall be submitted not later than six months from the date the person making the request was notified of the decision of the Court concerning:

(a) The unlawfulness of the arrest or detention under article 85, paragraph 1;

(b) The reversal of the conviction under article 85, paragraph 2;

(c) The existence of a grave and manifest miscarriage of justice under article 85, paragraph 3.

3. The request shall contain the grounds and the amount of compensation requested.

4. The person requesting compensation shall be entitled to legal assistance.

00-49434 (E)

Rule 8.14
Procedure for seeking compensation

1. A request for compensation and any other written observation by the person filing the request shall be transmitted to the Prosecutor, who shall have an opportunity to respond in writing. Any observations by the Prosecutor shall be notified to the person filing the request.

2. The Chamber designated under rule 8.13, sub-rule 1, may either hold a hearing or determine the matter on the basis of the request and any written observations by the Prosecutor and the person filing the request. A hearing shall be held if the Prosecutor or the person seeking compensation so requests.

3. The decision shall be taken by the majority of the judges. The decision shall be notified to the Prosecutor and to the person filing the request.

Rule 8.15
Amount of compensation

In establishing the amount of any compensation in conformity with article 85, paragraph 3, the Chamber designated under rule 8.13, sub-rule 1, shall take into consideration the consequences of the grave and manifest miscarriage of justice on the personal, family, social and professional situation of the person filing the request.

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21 June 2000

Original: English

Preparatory Commission for the International Criminal Court
Working Group on Rules of Procedure and Evidence
New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Report of the Working Group

Chapter 14
International cooperation and judicial assistance

Section I
Requests for cooperation under article 87

Rule 9.1
Organs of the Court responsible for the transmission and receipt of any communications relating to international cooperation and judicial assistance

1. Upon and subsequent to the establishment of the Court, the Registrar shall obtain from the Secretary-General of the United Nations any communication made by States pursuant to article 87, paragraphs 1 (a) and 2.

2. The Registrar shall transmit the requests for cooperation made by the Chambers and shall receive the responses, information and documents from requested States. The Office of the Prosecutor shall transmit the requests for cooperation made by the Prosecutor and shall receive the responses, information and documents from requested States.

3. The Registrar shall be the recipient of any communication from States concerning subsequent changes in the designation of the national channels charged with receiving requests for cooperation, as well as of any change in the language in which requests for cooperation should be made, and shall, upon request, make such information available to States Parties as may be appropriate.

00-49295 (E)

4. The provisions of sub-rule 2 are applicable *mutatis mutandis* where the Court requests information, documents or other forms of cooperation and assistance from an intergovernmental organization.

5. The Registrar shall transmit any communications referred to in sub-rules 1 and 3 and rule 9.2, sub-rule 2, as appropriate, to the Presidency or the Office of the Prosecutor, or both.

Rule 9.2
Channels of communication

1. Communications concerning the national authority charged with receiving requests for cooperation made upon ratification, acceptance, approval or accession shall provide all relevant information about such authorities.

2. When an intergovernmental organization is asked to assist the Court under article 87, paragraph 6, the Registrar shall, when necessary, ascertain its designated channel of communication and obtain all relevant information relating thereto.

Rule 9.3
Language chosen by States Parties under article 87, paragraph 2

1. When a requested State Party has more than one official language, it may indicate upon ratification, acceptance, approval or accession that requests for cooperation and any supporting documents can be drafted in any one of its official languages.

2. When the requested State Party has not chosen a language for communication with the Court upon ratification, acceptance, accession or approval, the request for cooperation shall either be in or be accompanied by a translation into one of the working languages of the Court pursuant to article 87, paragraph 2.

Rule 9.4
Language of requests directed to States not party to the Statute

When a State not party to the Statute has agreed to provide assistance to the Court under article 87, paragraph 5, and has not made a choice of language for such requests, the requests for cooperation shall either be in or be accompanied by a translation into one of the working languages of the Court.

Rule 9.5
Changes in the channels of communication or the languages of requests for cooperation

1. Changes concerning the channel of communication or the language a State has chosen under article 87, paragraph 2, shall be communicated in writing to the Registrar at the earliest opportunity.

2. Such changes shall take effect in respect of requests for cooperation made by the Court at a time agreed between the Court and the State or, in the absence of such an agreement, 45 days after the Court has received the communication and, in all cases, without prejudice to current requests or requests in progress.

Section II
Surrender, transit and competing requests under articles 89 and 90

Rule 9.6
Challenge to admissibility of a case before a national court

When a situation described in article 89, paragraph 2, arises, and without prejudice to the provisions of article 19 and of rules 2.14 to 2.18 on procedures applicable to challenges to the jurisdiction of the Court or the admissibility of a case, the Chamber dealing with the case, if the admissibility ruling is still pending, shall take steps to obtain from the requested State all the relevant information about the *ne bis in idem* challenge brought by the person.

Rule 9.7
Request for transit under article 89, paragraph 3 (e)

1. In situations described in article 89, paragraph 3 (e), the Court may transmit the request for transit by any medium capable of delivering a written record.

2. When the time limit provided for in article 89, paragraph 3 (e), has expired and the person concerned has been released, such a release is without prejudice to a subsequent arrest of the person in accordance with the provisions of article 89 or article 92.

Rule 9.8
Possible temporary surrender

Following the consultations referred to in article 89, paragraph 4, the requested State may temporarily surrender the person sought in accordance with conditions determined between the requested State and the Court. In such case the person shall be kept in custody during his or her presence before the Court and shall be transferred to the requested State once his or her presence before the Court is no longer required, at the latest when the proceedings have been completed.

Rule 9.9
Arrangements for surrender

1. The requested State shall immediately inform the Registrar when the person sought by the Court is available for surrender.

2. The person shall be surrendered to the Court by the date and in the manner agreed upon between the authorities of the requested State and the Registrar.

3. If circumstances prevent the surrender of the person by the date agreed, the authorities of the requested State and the Registrar shall agree upon a new date and manner by which the person shall be surrendered.

4. The Registrar shall maintain contact with the authorities of the host State in relation to the arrangements for the surrender of the person to the Court.

Rule 9.9 *bis*
Release of a person from the custody of the Court other than upon completion of sentence

[See document PCNICC/2000/WGRPE/L.14/Add.1]

Rule 9.10
Competing requests in the context of a challenge to the admissibility of the case

In situations described in article 90, paragraph 8, the requested State shall provide the notification of its decision to the Prosecutor in order to enable him or her to act in accordance with article 19, paragraph 10.

Section III
Documents for arrest and surrender under articles 91 and 92

Rule 9.11
Translation of documents accompanying request for surrender

For the purposes of article 67, paragraph 1 (a), and in accordance with rule 5.15, sub-rule 1, the request under article 91 shall be accompanied, as appropriate, by a translation of the warrant of arrest or of the judgement of conviction and by a translation of the text of any relevant provisions of the Statute, in a language that the person fully understands and speaks.

Rule 9.12
Time limit for submission of documents after provisional arrest

For the purposes of article 92, paragraph 3, the time limit for receipt by the requested State of the request for surrender and the documents supporting the request shall be 60 days from the date of the provisional arrest.

Rule 9.13
Transmission of documents supporting the request

When a person has consented to surrender in accordance with the provisions of article 92, paragraph 3, and the requested State proceeds to surrender the person to

the Court, the Court shall not be required to provide the documents described in article 91 unless the requested State indicates otherwise.

Section IV
Cooperation under article 93

Rule 9.14
Instruction on self-incrimination accompanying request for witness

When making a request under article 93, paragraph 1 (e), with respect to a witness, the Court shall annex an instruction, concerning rule 6.9 relating to self-incrimination, to be provided to the witness in question, in a language that the person fully understands and speaks.[1]

Rule 9.16
Assurance provided by the Court under article 93, paragraph 2

The Chamber dealing with the case, on its own motion or at the request of the Prosecutor, defence or witness or expert concerned, may decide, after taking into account the views of the Prosecutor and the witness or expert concerned, to provide the assurance described in article 93, paragraph 2. If the Chamber considers it appropriate, it may invite and consider the views of the victims or their legal representatives participating in the proceedings pursuant to rules 6.30 to 6.30 *ter* before deciding on the assurance.

Rule 9.15
Transfer of a person in custody

1. Transfer of a person in custody to the Court in accordance with article 93, paragraph 7, shall be arranged by the national authorities concerned in liaison with the Registrar and the authorities of the host State.

2. The Registrar shall ensure the proper conduct of the transfer, including the supervision of the person while in the custody of the Court.

3. The person in custody before the Court shall have the right to raise matters concerning the conditions of his or her detention with the relevant Chamber.

4. In accordance with article 93, paragraph 7 (b), when the purposes of the transfer have been fulfilled, the Registrar shall arrange for the return of the person in custody to the requested State.

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1 [81] This rule should be reconsidered in the light of the discussion on rule 6.9.

Rule 9.18
Temporary transfer of the person from the State of enforcement

1. The Chamber that is considering the case may order the temporary transfer from the State of enforcement to the seat of the Court of any person sentenced by the Court whose testimony or other assistance is necessary to the Court. The provisions of article 93, paragraph 7, shall not apply.

2. The Registrar shall ensure the proper conduct of the transfer, in liaison with the authorities of the State of enforcement and the authorities of the host State. When the purposes of the transfer have been fulfilled, the Court shall return the sentenced person to the State of enforcement.

3. The person shall be kept in custody during his or her presence before the Court. The entire period of detention spent at the seat of the Court shall be deducted from the sentence remaining to be served.

Rule 9.17
Cooperation requested from the Court

1. In accordance with article 93, paragraph 10, and consistent with article 96, *mutatis mutandis*, a State may transmit to the Court a request for cooperation or assistance to the Court, either in or accompanied by a translation into one of the working languages of the Court.

2. Requests described in sub-rule 1 are to be sent to the Registrar, which shall transmit them, as appropriate, either to the Prosecutor or to the Chamber concerned.

3. If protective measures within the meaning of article 68 have been adopted, the Prosecutor or Chamber, as appropriate, shall consider the views of the Chamber which ordered the measures as well as those of the relevant victim or witness, before deciding on the request.

4. If the request relates to documents or evidence as described in article 93, paragraph 10 (b) (ii), the Prosecutor or Chamber, as appropriate, shall obtain the written consent of the relevant State before proceeding with the request.

5. When the Court decides to grant the request for cooperation or assistance from a State, the request shall be executed, insofar as possible, following any procedure outlined therein by the requesting State and permitting persons specified in the request to be present.

Section V
Cooperation under article 98

Rule 9.19
Provision of information

When a requested State notifies the Court that a request for surrender or assistance raises a problem of execution in respect of article 98, the requested State shall provide any information relevant to assist the Court in the application of

article 98. Any concerned third State or sending State may provide additional information to assist the Court.[2]

Section VI
Rule of speciality under article 101

Rule 9.20
Provision of views on article 101, paragraph 1

A person surrendered to the Court may provide views on a perceived violation of the provisions of article 101, paragraph 1.

Rule 9.21
Extension of the surrender

When the Court has requested a waiver of the requirements of article 101, paragraph 1, the requested State may ask the Court to obtain and provide the views of the person surrendered to the Court.

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2 (83) One delegation has proposed an addition to the rule related to article 98.

23 June 2000

Original: English

Preparatory Commission for the International Criminal Court
Working Group on Rules of Procedure and Evidence
New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Report of the Working Group

Chapter 14
International cooperation and judicial assistance

Corrigendum

1. **Rule 9.14**

   Delete footnote 1.

2. **Rule 9.16**

   Delete the second sentence.

00-49954 (E)

23 June 2000

Original: English

Preparatory Commission for the International Criminal Court
Working Group on Rules of Procedure and Evidence
New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Report of the Working Group

Chapter 14
International cooperation and judicial assistance

Addendum

Rule 9.9 *bis*
Release of a person from the custody of the Court other than upon completion of sentence

1. Subject to sub-rule 2, where a person surrendered to the Court is released from the custody of the Court because the Court does not have jurisdiction, the case is inadmissible under article 17, paragraph 1 (b), (c) or (d), the charges have not been confirmed under article 61, the person has been acquitted at trial or on appeal, or for any other reason, the Court shall, as soon as possible, make such arrangements as it considers appropriate for the transfer of the person, taking into account the views of the person, to a State which is obliged to receive him or her, to another State which agrees to receive him or her, or to a State which has requested his or her extradition with the consent of the original surrendering State. In this case, the host State shall facilitate the transfer in accordance with the agreement referred to in article 3, paragraph 2, and the related arrangements.

2. Where the Court has determined that the case is inadmissible under article 17, paragraph 1 (a), the Court shall make arrangements, as appropriate, for the transfer of the person to a State whose investigation or prosecution has formed the basis of the successful challenge to admissibility, unless the State that originally surrendered the person requests his or her return.

00-49966 (E)

21 June 2000

Original: English

Preparatory Commission for the International Criminal Court
Working Group on Rules of Procedure and Evidence
New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Report of the Working Group

Chapter 15
Enforcement

Section I
Role of States in enforcement of sentences of imprisonment and change in designation of State of enforcement under articles 103 and 104

Rule 10.1
Communications between the Court and States

Unless the context otherwise requires, rules 9.1 to 9.5 shall apply, as appropriate, to communications between the Court and a State on matters relating to enforcement of sentences.

Rule 10.2
Organ responsible under Part 10

Unless provided otherwise in the Rules, the functions of the Court under Part 10 shall be exercised by the Presidency.

00-49301 (E)

Rule 10.3
List of States of enforcement

1. A list of States that have indicated their willingness to accept sentenced persons shall be established and maintained by the Registrar.

2. The Presidency shall not include a State on the list provided for in article 103, paragraph (1), if it does not agree with the conditions that such a State attaches to its acceptance. The Presidency may request any additional information from that State prior to taking a decision.

3. A State that has attached conditions of acceptance may at any time withdraw such conditions. Any amendments or additions to such conditions shall be subject to confirmation by the Presidency.

4. A State may at any time inform the Registrar of its withdrawal from the list. Such withdrawal shall not affect the enforcement of the sentences in respect of persons that the State has already accepted.

5. The Court may enter bilateral arrangements with States with a view to establishing a framework for the acceptance of prisoners sentenced by the Court. Such arrangements shall be consistent with the Statute.

Rule 10.4
Principles of equitable distribution

Principles of equitable distribution for purposes of article 103, paragraph 3, shall include:

(a) The principle of equitable geographical distribution;

(b) The need to afford each State on the list an opportunity to receive sentenced persons;

(c) The number of sentenced persons already received by that State and other States of enforcement;

(d) Any other relevant factors.

Rule 10.5
Timing of delivery of the sentenced person to the State of enforcement

The delivery of a sentenced person from the Court to the designated State of enforcement shall not take place unless the decision on the conviction and the decision on the sentence have become final.

Rule 10.6
Views of the sentenced person

1. The Presidency shall give notice in writing to the sentenced person that it is addressing the designation of a State of enforcement. The sentenced person shall,

within such time limit as the Presidency shall prescribe, submit in writing his or her views on the question to the Presidency.

2. The Presidency may allow the sentenced person to make oral presentations.

3. The Presidency shall allow the sentenced person:

(a) To be assisted, as appropriate, by a competent interpreter and to benefit from any translation necessary for the presentation of his or her views;

(b) To be granted adequate time and facilities necessary to prepare for the presentation of his or her views.

Rule 10.7
Information relating to designation

When the Presidency notifies the designated State of its decision, it shall also transmit the following information and documents:

(a) The name, nationality, date and place of birth of the sentenced person;

(b) A copy of the final judgement of conviction and of the sentence imposed;

(c) The length and commencement date of the sentence and the time remaining to be served;

(d) After having heard the views of the sentenced person, any necessary information concerning the state of his or her health, including any medical treatment that he or she is receiving.

Rule 10.8
Rejection of designation in a particular case

Where a State in a particular case rejects the designation by the Presidency, the Presidency may designate another State.

Rule 10.9
Delivery of the sentenced person to the State of enforcement

1. The Registrar shall inform the Prosecutor and the sentenced person of the State designated to enforce the sentence.

2. The sentenced person shall be delivered to the State of enforcement as soon as possible after the designated State of enforcement accepts.

3. The Registrar shall ensure the proper conduct of the delivery of the person in consultation with the authorities of the State of enforcement and the host State.

Rule 10.10
Transit

1. No authorization is required if the sentenced person is transported by air and no landing is scheduled on the territory of the transit State. If an unscheduled landing occurs on the territory of the transit State, that State shall, to the extent possible under the procedure of national law, detain the sentenced person in custody until a request for transit as provided in sub-rule 2 or a request under article 89, paragraph 1, or article 92 is received.

2. To the extent possible under the procedure of national law, a State Party shall authorize the transit of a sentenced person through its territory and the provisions of article 89, paragraph 3 (b) and (c), and articles 105 and 108 and any rules relating thereto shall, as appropriate, apply. A copy of the final judgement of conviction and of the sentence imposed shall be attached to such request for transit.

Rule 10.11
Costs

1. The ordinary costs for the enforcement of the sentence in the territory of the State of enforcement shall be borne by that State.

2. Other costs, including those for the transport of the sentenced person and those referred to in article 100, paragraph 1 (c), (d) and (e), shall be borne by the Court.

Rule 10.12
Change in designation of State of enforcement

1. The Presidency, acting on its own motion or at the request of the sentenced person or the Prosecutor, may at any time act in accordance with article 104, paragraph 1.

2. The request of the sentenced person or of the Prosecutor shall be made in writing and shall set out the grounds upon which the transfer is sought.

Rule 10.13
Procedure for change in the designation of a State of enforcement

1. Before deciding to change the designation of a State of enforcement, the Presidency may:

(a) Request views from the State of enforcement;

(b) Consider written or oral presentations of the sentenced person and the Prosecutor;

(c) Consider written or oral expert opinion concerning, *inter alia*, the sentenced person;

(d) Obtain any other relevant information from any reliable sources.

2. The provisions of rule 10.6, sub-rule 3, shall apply, as appropriate.

3. If the Presidency refuses to change the designation of the State of enforcement, it shall, as soon as possible, inform the sentenced person, the Prosecutor and the Registrar of its decision and of the reasons therefor. It shall also inform the State of enforcement.

Section II
Enforcement, supervision and transfer under articles 105, 106 and 107

Rule 10.15
Transfer for the purpose of revision

1. For the conduct of the hearing provided for in rule 8.12, the relevant Chamber shall issue its order sufficiently in advance to enable the transfer of the sentenced person to the seat of the Court, as appropriate.

2. The determination of the Court shall be notified without delay to the State of enforcement.

3. The provisions of rule 10.9, sub-rule 3, shall be applicable.

Rule 10.16
Supervision of enforcement of sentences and conditions of imprisonment

1. In order to supervise the enforcement of sentences of imprisonment, the Presidency:

(a) Shall, in consultation with the State of enforcement, ensure that in establishing appropriate arrangements for the exercise by any sentenced person of his or her right to communicate with the Court about the conditions of imprisonment, the provisions of article 106, paragraph 3, shall be respected;

(b) May, when necessary, request any information, report or expert opinion from the State of enforcement or from any reliable sources;

(c) May, where appropriate, delegate a judge of the Court or a member of the staff of the Court who will be responsible, after notifying the State of enforcement, for meeting the sentenced person and hearing his or her views, without the presence of national authorities;

(d) May, where appropriate, give the State of enforcement an opportunity to comment on the views expressed by the sentenced person under sub-rule 1 (c).

2. When a sentenced person is eligible for a prison programme or benefit available under the domestic law of the State of enforcement which may entail some activity outside the prison facility, the State of enforcement shall communicate that fact to the Presidency, together with any relevant information or observation, to enable the Court to exercise its supervisory function.

Rule 10.17
Information on location of the person for enforcement of fines, forfeitures or reparation measures

For the purpose of enforcement of fines and forfeiture measures and of reparation measures ordered by the Court, the Presidency may, at any time or at least 30 days before the scheduled completion of the sentence served by the sentenced person, request the State of enforcement to transmit to it the relevant information concerning the intention of that State to authorize the person to remain in its territory or the location where it intends to transfer the person.

Rule 10.17 *bis*
Procedure for article 107, paragraph 3

With respect to article 107, paragraph 3, the procedure set out in rules 10.18 and 10.20 shall apply, as appropriate.

Section III
Limitation on the prosecution or punishment of other offences under article 108

Rule 10.18
Request to prosecute or enforce a sentence for prior conduct

1. For the application of article 108, when the State of enforcement wishes to prosecute or enforce a sentence against the sentenced person for any conduct engaged in prior to that person's transfer, it shall notify its intention to the Presidency and transmit to it the following documents:

(a) A statement of the facts of the case and their legal characterization;

(b) A copy of any applicable legal provisions, including those concerning the statute of limitation and the applicable penalties;

(c) A copy of any sentence, warrant of arrest or other document having the same force, or of any other legal writ which the State intends to enforce;

(d) A protocol containing views of the sentenced person obtained after the person has been informed sufficiently about the proceedings.

2. In the event of a request for extradition made by another State, the State of enforcement shall transmit the entire request to the Presidency with a protocol containing the views of the sentenced person obtained after informing the person sufficiently about the extradition request.

3. The Presidency may in all cases request any document or additional information from the State of enforcement or the State requesting extradition.

4. If the person was surrendered to the Court by a State other than the State of enforcement or the State seeking extradition, the Presidency shall consult with the

State that surrendered the person and take into account any views expressed by that State.

5. Any information or documents transmitted to the Presidency under sub-rules 1 to 4 shall be transmitted to the Prosecutor, who may comment.

6. The Presidency may decide to conduct a hearing.

Rule 10.20
Decision on request to prosecute or enforce a sentence

1. The Presidency shall make a determination as soon as possible. This determination shall be notified to all those who have participated in the proceedings.

2. If the request submitted under sub-rules 1 or 2 concerns the enforcement of a sentence, the sentenced person may serve that sentence in the State designated by the Court to enforce the sentence pronounced by it or be extradited to a third State only after having served the full sentence pronounced by the Court, subject to the provisions of article 110.

3. The Presidency may authorize the temporary extradition of the sentenced person to a third State for prosecution only if it has obtained assurances which it deems to be sufficient that the sentenced person will be kept in custody in the third State and transferred back to the State responsible for enforcement of the sentence pronounced by the Court, after the prosecution.

Rule 10.22
Information on enforcement

The Presidency shall request the State of enforcement to inform it of any important event concerning the sentenced person, and of any prosecution of that person for events subsequent to his or her transfer.

Section IV
Enforcement of fines, forfeiture measures and reparation orders

Rule 10.23
Cooperation and measures for enforcement of fines, forfeiture or reparation orders

For the enforcement of fines, forfeiture or reparation orders, the Presidency shall, as appropriate, seek cooperation and measures for enforcement in accordance with Part 9, as well as transmit copies of relevant orders to any State with which the sentenced person appears to have direct connection by reason of either nationality, domicile or habitual residence or by virtue of the location of the sentenced person's assets and property or with which the victim has such connection. The Presidency shall, as appropriate, inform the State of any third-party claims or of the fact that no claim was presented by a person who received notification of any proceedings conducted pursuant to article 75.

Rule 10.23 *bis*
Orders for forfeiture and reparations

1. In order to enable States to give effect to an order for forfeiture, the order shall specify:

(a) The identity of the person against whom the order has been issued;

(b) The proceeds, property and assets that have been ordered by the Court to be forfeited; and

(c) The value of the proceeds, property and assets to be forfeited in case forfeiture of the proceeds, property and assets as specified in sub-rule (b) is not possible.

2. In the request for cooperation and measures for enforcement, the Court shall also provide available information as to the location of the proceeds, property and assets that are covered by the order for forfeiture.

3. In order to enable States to give effect to an order for reparations, the order shall specify:

(a) The identity of the person against whom the order has been issued;

(b) In respect of reparations of a financial nature, the identity of the victims to whom individual reparations have been granted, and, where the award for reparations shall be deposited with the Trust Fund, the particulars of the Trust Fund for the deposit of the award; and

(c) The scope and nature of the reparations ordered by the Court, including, where applicable, the property and assets for which restitution has been ordered.

4. Where the Court awards reparations on an individual basis, a copy of the reparation order shall be transmitted to the victim concerned.

Rule 10.24
Non-modification of orders for reparation

The Presidency shall, when transmitting copies of orders for reparations to States Parties under rule 10.23, inform them that, in giving effect to an order for reparations, the national authorities shall not modify the reparations specified by the Court, the scope or the extent of any damage, loss or injury determined by the Court or the principles stated in the order, and shall facilitate the enforcement of such order.

Rule 10.25
Non-modification of judgements in which fines were imposed

When transmitting copies of judgements in which fines were imposed to States Parties for the purpose of enforcement in accordance with article 109 and rule 10.23, the Presidency shall inform them that in enforcing the fines imposed, national authorities shall not modify them.

Rule 10.26
Decision on disposition or allocation of property or assets

1. The Presidency shall, after having consulted, as appropriate, with the Prosecutor, the sentenced person, the victims or their legal representatives, the national authorities of the State of enforcement or any relevant third party, or representatives of the Trust Fund provided for in article 79, decide on all matters related to the disposition or allocation of property or assets realized through enforcement of an order of the Court.

2. In all cases, when the Presidency decides on the disposition or allocation of property or assets belonging to the sentenced person, it shall give priority to the enforcement of measures concerning reparations to victims.

Rule 10.27
Assistance for service or any other measure

The Presidency shall assist the State in the enforcement of fines, forfeiture or reparation orders, as requested, with the service of any relevant notification on the sentenced person or any other relevant persons, or the carrying out of any other measures necessary for the enforcement of the order under the procedure of the national law of the enforcement State.

Section V
Review concerning reduction of sentence under article 110

Rule 10.31
Criteria for review concerning reduction of sentence

In reviewing the question of reduction of sentence pursuant to article 110, paragraphs 3 and 5, the three judges of the Appeals Chamber shall take into account the criteria listed in article 110, paragraph 4 (a) and (b), and the following criteria:

(a) The conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime;

(b) The prospect of the resocialization and successful resettlement of the sentenced person;

(c) Whether the early release of the sentenced person would give rise to significant social instability;

(d) Any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release;

(e) Individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age.

Rule 10.29
Procedure for review concerning reduction of sentence

1. For the application of article 110, paragraph 3, three judges of the Appeals Chamber appointed by that Chamber shall conduct a hearing, unless they decide otherwise in a particular case, for exceptional reasons. The hearing shall be conducted with the sentenced person, who may be assisted by his or her counsel, with interpretation, as may be required. Those three judges shall invite the Prosecutor, the State of enforcement of any penalty under article 77 or any reparation order pursuant to article 75 and, to the extent possible, the victims or their legal representatives who participated in the proceedings, to participate in the hearing or to submit written observations. Under exceptional circumstances, this hearing may be conducted by way of a video-conference or in the State of enforcement by a judge delegated by the Appeals Chamber.

2. The same three judges shall communicate the decision and the reasons for it to all those who participated in the review proceedings as soon as possible.

3. For the application of article 110, paragraph 5, three judges of the Appeals Chamber appointed by that Chamber shall review the question of reduction of sentence every three years, unless it establishes a shorter interval in its decision taken pursuant to article 110, paragraph 3. In case of a significant change in circumstances, those three judges may permit the sentenced person to apply for a review within the three-year period or such shorter period as may have been set by the three judges.

4. For any review under article 110, paragraph 5, three judges of the Appeals Chamber appointed by that Chamber shall invite written representations from the sentenced person or his or her counsel, the Prosecutor, the State of enforcement of any penalty under article 77 and any reparation order pursuant to article 75 and, to the extent possible, the victims or their legal representatives who participated in the proceedings. The three judges may also decide to hold a hearing.

5. The decision and the reasons for it shall be communicated to all those who participated in the review proceedings as soon as possible.

Section VI
Escape

Rule 10.32
Measures under article 111 in the event of escape

1. If the sentenced person has escaped, the State of enforcement shall, as soon as possible, advise the Registrar by any medium capable of delivering a written record. The Presidency shall then proceed in accordance with Part 9.

2. However, if the State in which the sentenced person is located agrees to surrender him or her to the State of enforcement, pursuant to either international agreements or its national legislation, the State of enforcement shall so advise the Registrar in writing. The person shall be surrendered to the State of enforcement as soon as possible, if necessary in consultation with the Registrar, who shall provide

all necessary assistance, including, if necessary, the presentation of requests for transit to the States concerned, in accordance with rule 10.10. The costs associated with the surrender of the sentenced person shall be borne by the Court if no State assumes responsibility for them.

3. If the sentenced person is surrendered to the Court pursuant to Part 9, the Court shall transfer him or her to the State of enforcement. Nevertheless, the Presidency may, acting on its own motion or at the request of the Prosecutor or of the initial State of enforcement and in accordance with article 103 and rules 10.6 to 10.9, designate another State, including the State to the territory of which the sentenced person has fled.

4. In all cases, the entire period of detention in the territory of the State in which the sentenced person was in custody after his or her escape and, where sub-rule 3 is applicable, the period of detention at the seat of the Court following the surrender of the sentenced person from the State in which he or she was located shall be deducted from the sentence remaining to be served.

23 June 2000

Original: English

Preparatory Commission for the International Criminal Court
Working Group on Rules of Procedure and Evidence
New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Report of the Working Group

Chapter 15
Enforcement

Corrigendum

1. **Rule 10.1**

Before the words "rules 9.1 to 9.15" *insert* the words "article 87 and".

2. **Rule 10.15**

Delete rule 10.15 from chapter 15 and incorporate its contents into rule 8.12 in chapter 12.

3. **Rule 10.23 *bis***

Replace the text of sub-rule 1 (c) by the following text:

(c) That if the State Party is unable to give effect to the order for forfeiture in relation to the specified proceeds, property or assets, it shall take measures to recover the value of the same.

00-49948 (E)